

**ACTION SUMMARY MINUTES**  
**MINUTES OF THE REGULAR MEETING OF**  
**THE BOARD OF DIRECTORS OF THE**  
**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**  
**HELD WEDNESDAY, SEPTEMBER 11, 2013**

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Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, September 11, 2013 at 6:00 p.m. in the Board Chambers of the Fresno Metropolitan Flood Control District at 5469 East Olive Avenue; Fresno, California.

**DIRECTORS PRESENT:** Jennette Williams, Chairman  
Mike Rastegar, Vice-Chairman  
Roy Spina  
Kendall Groom  
Barbara Goodwin  
Frank Fowler  
Buzz Burleson

**DIRECTORS ABSENT:** None

**STAFF, CONSULTANTS,**

**OTHERS PRESENT:** Bob Van Wyk, General Manager  
Jerry Lakeman, District Engineer  
Alan Hofmann, Assistant District Engineer/Design  
Peter Sanchez, Operations Engineer  
Frances Lopez, Office Manager  
Esther Schwandt, Clerk to the Board  
Kristine Johnson, Staff Analyst  
Gary Newmark, Staff Analyst  
Larry Kalpakoff, Information Systems Coordinator  
Daniel Rourke, Environmental Resources Manager

Doug Jensen, General Counsel;  
Baker, Manock & Jensen  
Ken Price, Assistant General Counsel;  
Baker, Manock & Jensen

Greg Eaton, President, Eaton & Eaton Insurance Brokers

**PRESIDING:** Director Williams, presiding as Chairman called the meeting to order at 6:00 p.m. and Director Fowler led the Pledge of Allegiance.

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**2. REPORT OF THE GENERAL MANAGER:**

Mr. Van Wyk reported on the following: (1) he distributed information regarding the security concerns at Basin "XX" and the District's response to the situation; (2) he distributed a Fresno County invitation to a Groundbreaking Ceremony at their Regional Household Hazardous Waste Management Facility; (3) at the request of Director Goodwin, he distributed a San Joaquin River Conservancy (Conservancy) Board Memorandum regarding the homeless encampments along the San Joaquin River, he then showed photographs of the area and Director Goodwin explained the situation and the Conservancy's proposed response; and (4) he distributed a copy of the Resolution Honoring the Memory of those Lost on September 11, 2001 as adopted by the Board of Directors on September 11, 2002.

**3. APPROVAL OF MINUTES: Meeting of August 28, 2013**

Due to his absence at the August 28, 2013 Board Meeting, Director Fowler abstained.

**Approved as Recommended**

**Motion by: Burleson      Second by: Goodwin**  
**Ayes: Williams, Rastegar, Spina, Groom, Goodwin, Burleson**  
**Noes: None**  
**Abstentions: Fowler**  
**Absentees: None**

**4. BUSINESS AND PRESENTATIONS FROM THE FLOOR:**

There was no Business or Presentations from the Floor

**5. ADDITIONS TO THE AGENDA:**

There were no Additions to the Agenda.

**6. POTENTIAL CONFLICTS OF INTEREST:**

There were no Conflicts of Interest.

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**7. PUBLIC HEARING:**

There were no Public Hearings scheduled.

**8. CONSENT CALENDAR:**

- a. Adoption of Resolution of Appreciation, Fansler Foundation for 2013 Grant Award, Basin "D" Oso de Oro Lake Park (Forkner & Barstow)
- b. Authorization to Allocate Funding, Design and Advertise for Bids, Storm Drain Pipeline, Basin "BX" (Temperance & Teague)
- c. Authorization to Distribute 2014 Clean Stormwater Grant Applications
- d. Authorization to Execute Standard Developer Agreement with City of Clovis:
  - (1) Clovis Avenue Improvement Project, Drainage Area "2D"  
(Clovis & Gettysburg)
  - (2) Alluvial Avenue Improvement Project, Drainage Areas "7C" & "7D"  
(Alluvial & Fowler)
- e. Authorization to Renew Lease Agreement, Outdoor Systems Advertising, Basin "EH" (Herndon & Golden State)
- g. Report of Public Concerns, August 2013
- h. Report on Los Angeles County Flood Control District Versus Natural Resources Defense Council; Stormwater Liability Litigation
- i. Update on Statewide Industrial General Permit Regulating Stormwater Discharges from Commercial and Industrial Facilities

Director Spina requested Agenda Item 8f be pulled.

**Approved as Recommended, with the exception of Agenda Item 8f which was pulled**

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**Motion by: Rastegar      Second by: Fowler**  
**Ayes: Williams, Rastegar, Spina, Groom, Goodwin, Fowler, Burleson**  
**Noes: None**  
**Abstentions: None**  
**Absentees: None**

**f. Authorization to Renew Telecom and Internet Services with TW Telecom**

Recommend the Board of Directors approve a new three year agreement for \$1826.50 per month with TW Telecom.

Director Spina requested clarification as to the proposed figures. Mr. Kalpakoff stated the proposed price is a monthly cost for 36 months (3 years).

**Motion by: Spina      Second by: Fowler**  
**Ayes: Williams, Rastegar, Spina, Groom, Goodwin, Fowler, Burleson**  
**Noes: None**  
**Abstentions: None**  
**Absentees: None**

**9. Authorization to Schedule Hearing to Consider Filing Default Notice, Agreement No. 1411(D)-DE-21, Randhawa (Maple & International)**

Recommend the Board of Directors authorize notice to the Developer and schedule a Hearing to consider recording a Notice of Default with respect to the undeveloped lots (Lots B, C, and D of Parcel Map No. 2005-008.

Mr. Lakeman noted one correction to the title of this item stating staff is asking for "Authorization to file a Statement of Default", not "Filing a Default Notice".

**Approved as Recommended**

**Motion by: Rastegar      Second by: Groom**  
**Ayes: Williams, Rastegar, Spina, Groom, Goodwin, Fowler, Burleson**  
**Noes: None**  
**Abstentions: None**  
**Absentees: None**

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**10. Report on District's Dam Insurance Policy**

This memo is for informational purposes only and to assist the Board in making decisions as to future coverage.

Mr. Newmark addressed the Board with respect to this item as outlined in the Board Memorandum. He then introduced Mr. Greg Eaton of Eaton & Eaton Insurance Brokers who currently hold the District's Dam Insurance Policy.

Director Spina initiated discussion with respect to Attachment No. 5 which states, "The Insurance Policy that you have purchased is being issued by an insurer that is not licensed by the State of California". Mr. Newmark noted should the company fail the company would not have the obligation to pay.

Mr. Eaton addressed the Board stating Attachment No. 5 is called a Form D1 which acknowledges that the District is dealing with a company that is not in the State of California. He stated the current carrier is Lexington which is an A15 company. He stated Lexington operate this way because it gives them more leeway to take on risks that they want to put specialized endorsements on, or have special pricing. He stated the only safety net the District does not have, is that companies that are not admitted to the State of California are not subject to the guarantee fund of California. He then explained the differences as he sees it between Association of California Water Agencies/Joint Powers Insurance Authority (ACWA/JPIA) and Eaton & Eaton's policy.

Director Williams initiated discussion as to the need to carry the Dam Insurance, in particularly highlighting Mr. Van Wyk's comment that it is not required, and the District's facilities are not the typical dams. The Board also reviewed the attachment which illustrates extreme scenarios which shows the coverage provided by the Policy would be minimal should there be a significant event. Discussion was also carried as to possibly reducing the number of dams the District insures.

Director Goodwin questioned whether other Special Districts carry dam insurance. Mr. Van Wyk stated they do and he believed there were approximately 6 or 7 other Special Districts insured through the ACWA/JPIA program.

Mr. Eaton then distributed and reviewed his "Renewal Proposal for Dam Failure Liability October 13, 2013 to October 13, 2014" as attached to the Board Packet. Mr. Eaton noted he has also asked the carrier for a quote for the \$5 million occurrence limit but at an increase aggregate of \$10 million to see what the premium numbers are.

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Mr. Lakeman questioned what the numbers would do if you increased the coverage to more than \$5 million. Mr. Eaton noted the layers would become progressively cheaper. Mr. Lakeman noted his point is by buying such limited amounts, the amounts look considerably higher.

Director Rastegar initiated discussion with respect to the ability for Federal Emergency Management Agency (FEMA) assistance should a significant event occur. Mr. Eaton noted the assistance from FEMA would be loans that businesses and individuals would be able to apply for, which ultimately have to be repaid. Director Rastegar initiated discussion with respect to flooding events which would not be covered under the dam policy.

Director Fowler noted his belief the District's liability would increase, should the District change the operational characteristics of the dam/reservoir.

Director Burleson noted his belief that should there be a failure in the dam; \$5 million would not be a significant amount. He noted his belief there is case law where a water park in Southern California hired a non-licensed contractor and the State of California Superior Court granted non relief to the owner of the water park solely based on the fact that they did not have a licensed contractor in the State of California. Mr. Burleson stated he is therefore concerned that a non-licensed insurer might apply somehow under that ruling. Mr. Eaton stated he disagreed with Director Burleson's comment.

Director Groom questioned whether the comment by Mr. Eaton as stated in the Board Memorandum, "Mr. Eaton confirmed that the policy would cover such losses caused by sudden collapse, leaking, conditions due to extreme rainfall events, rodent holes, design flaws, lack of maintenance, vandalism and equipment failure", was in writing? Mr. Eaton stated he would confirm that in writing. Mr. Newmark stated it was confirmed in an email.

Director Rastegar suggested since this item was not an action item, but rather a report to the Board he would suggest staff continue to review the need and necessity of the Dam Insurance and bring a recommendation back to the Board.

Director Goodwin suggested along with that review, staff contact the other Special Districts to determine what insurance carriers the other Special Districts are using and their level of coverage. She also stated staff needed to evaluate the reasons for obtaining the Dam Insurance in the first place, the risks of not carrying the insurance, the benefits and/or non-benefits of carrying the insurance, etc. as these are the items the staff and Board would need to see in order to make a determination.

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Director Fowler concurred noting he believed it was a risk analysis on the part of staff as to how the District operates the facilities, noting his belief a natural disaster at the District's facilities would be so great, that the insurance would not be helpful in the long run.

Responding to Director Burlison's question, Mr. Eaton stated they do not insure any other dams in California at the present time, and have never paid out any claims on any dams.

Mr. Van Wyk stated staff will bring a report back to the Board at the September second Board Meeting.

Report submitted for informational purposes only, no action is required by the Board unless specific direction is to be given to staff.

**As the report was submitted for informational purposes only, no further action was taken.**

**11. Board Reports, Workshops, Correspondence and Requests for Future Agenda Items**

**No items were submitted**

**REPORT OF GENERAL COUNSEL**

Mr. Jensen reported on Legislative items of interest to the District.

**CLOSED SESSION**

The Board then convened in Closed Session at 7:03 pm to consider the following litigation:

**13. CONFERENCE WITH REAL PROPERTY NEGOTIATORS:**

Pursuant to subdivision (a) of Government Section 54956.8: Storm Drainage Easements on Lots 8 and 9 of the Lismac Terrace Tract, Portion of APN 451-152-15 and 451-152-16, Sanchez Property

The Board then convened in regular session at 7:31 pm. Mr. Jensen stated instruction was given to the real property negotiators in Closed Session.

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**ADJOURNMENT**

**Adjourned Board Meeting at 7:32 pm.**

**Motion by:** Rastegar      **Second by:** Spina  
**Ayes:** Williams, Rastegar, Spina, Groom, Goodwin, Fowler, Burleson  
**Noes:** None  
**Abstentions:** None  
**Absentees:** None

  
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BOB VAN WYK  
GENERAL MANAGER-SECRETARY

  
\_\_\_\_\_  
DATE